

Group I, claims 1-2, 5, 8-9, and 12, allegedly drawn to a method of making a genetically stabilized polyploid apomictic plant by sexual hybridization, and plants made by such method;

Group II, claims 1-2 and 8-9, allegedly drawn to a method of making a genetically stabilized polyploid apomictic plant by chemical treatment, and plants made by such method;

Group III, claims 3 and 10, allegedly drawn to a method of making a genetically stabilized apomictic plant with chemical or irradiation induced mutagenesis, and plants made by such method;

Group IV, claims 3 and 10, allegedly drawn to a method of making a genetically stabilized apomictic plant with application of stress to a plant, and plants made by such method;

Group V, claims 4, 5, 7, 11-12, and 14, allegedly drawn to a method of making a genetically stabilized apomictic plant by transformation with a recombinant nucleic acid construct, and plants made by such method; and

Group VI, claims 6 and 13, allegedly drawn to a method of making a plant with a high frequency of sexual seed formation from an apomictic plant, by transforming the apomictic plant with a recombinant antisense nucleic acid construct, and plants made by such method.

For the purpose of being fully responsive to the restriction requirement, Applicant respectfully elects Group I, claims 1-2, 5, 8-9, and 12, with traverse.

PCT Rule 13.1 sets out the unity of invention requirement, that is, that the "international invention shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 defines the circumstances in which the requirement of unity of invention is to be considered fulfilled:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The Examiner alleged that the technical feature linking Groups I-VI is that each group is a method of making a genetically stabilized apomictic plant. The Examiner further alleged that a method of making a genetically stabilized apomictic plant lacks novelty or an inventive step in view of S. Ellerstrom, 99 Hereditas 315 (1983). Applicant respectfully submits that this is incorrect because Ellerstrom fails to disclose or suggest stabilizing apomictic plants as the term "stabilizing" is used in the present application. Therefore, the presently claimed methods are both novel and inventive over Ellerstrom.

"Genetic instability" is a term defined in the application at page 12, lines 7-9, to refer to the phenomenon where the average frequency of sexual seed formation among sexually produced progeny of an apomictic plant exceeds the average frequency of sexual seed formation of such apomictic plant.

"Stabilizing" is also a term defined in the application (page 12, lines 10-13), which refers to assuring that the average frequency of sexual seed formation among sexually derived progeny of a facultatively apomictic plant does not exceed the average frequency of sexual seed formation of such apomictic plant.

Ellerstrom failed to address this subject. Ellerstrom reported obtaining 969 sexually produced seeds from the putative apomictic yellow-flowering line of his experiment. Further, Ellerstrom reported obtaining one apomictically derived progeny plant from 975 plants derived from the putative apomictic line. However, Ellerstrom failed to report observing the average frequency of sexual seed formation of any of the 969 sexually produced progeny of the one putative apomictic line. Moreover, Ellerstrom failed to report a comparison of the average frequency of sexual seed formation among sexually produced progeny of the putative apomictic line as either exceeding, remaining the same as, or being less than the average frequency of sexual seed formation of the putative apomictic line. Therefore, Ellerstrom failed to observe genetic stability or instability of the putative apomictic

plant. Since Ellerstrom failed to observe genetic stability or instability, he also failed to report stabilizing genetic instability.

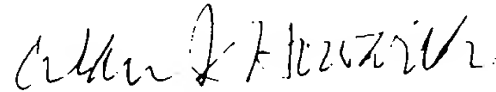
Thus, it is respectfully submitted that claims 1-14 are novel and inventive over Ellerstrom. Therefore, the present restriction requirement, which is based on the allegation that a method of making a genetically stabilized apomictic plant lacks novelty or an inventive step in view of Ellerstrom, is unsupportable. Since the underlying allegation that a method of making a genetically stabilized apomictic plant lacks novelty or an inventive step in view of Ellerstrom cannot be maintained, the conclusion drawn from that allegation, namely that restriction is proper, must fall with it. The Examiner has not *prima facie* shown that restriction is proper under the applicable rules. Therefore, it is respectfully submitted that the restriction requirement should be reconsidered and withdrawn.

If the Examiner believes that it would expedite the prosecution of this application to conduct a telephone interview, the undersigned attorney would be most agreeable to receiving a telephone call.

For the reasons given above, Applicant respectfully requests reconsideration of the restriction requirement, withdrawal thereof, and examination of this application in its entirety.

DATED this 11<sup>th</sup> day of April, 2002.

Respectfully submitted,



---

Alan J. Howarth, Ph.D.  
Attorney Registration No. 36,553  
Customer No. 020450

Clayton, Howarth & Cannon, P.C.  
P.O. Box 1909  
Sandy, UT 84091  
Telephone: (801) 255-5335  
Facsimile: (801) 255-5338

S:\CHC Files\T 9 \T92 \T9212\US\T9212US.restriction response.04082002.wpd